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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,313	04/12/2004	Tim Bucher	390-017-USP/STL12994.00	2577
64776 7590 07/31/2008 HENSLEY KIM & HOLZER, LLC 1660 LINCOLN STREET SUITE 3000 DENVER, CO 80264				
EXAMINER SMITH, CHENECA				
ART UNIT		PAPER NUMBER		
2192				
MAIL DATE		DELIVERY MODE		
07/31/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/822,313

**Applicant(s)**

BUCHER ET AL.

**Examiner**

CHENECA P. SMITH

**Art Unit**

2192

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 10 July 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-29.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see notes below.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Tuan Q. Dam/  
Supervisory Patent Examiner, Art Unit 2192

Applicant's arguments are not persuasive.

In response to applicant's arguments regarding claim 1 that "Cheng explicitly teaches that transmission and storage of system profile information is undesirable, no motivation exists to combine Cheng with Brebner, which explicitly teaches the transmission of system profile information to remote locations" (see page 8, 2nd paragraph), applicants should note where Cheng teaches storing an update database that contains information for identifying in the client computers the software products stored thereon and information for determining for such products, which have software updates available; users of the client computers connect to the service provider computer and obtain a current version of portions of the database (see Abstract and col.3 lines 10-12 and lines 29-32). So, indications of the installed software products on the client computer are being received. In addition, although Cheng does seek to provide a system to determine software updates without abridging the privacy of users by obtaining and storing system profile information, Cheng also acknowledges that such system configuration information is necessary for determining which updates are applicable to a user's computer system and to ensure that the correct updates are being installed (see col.2 lines 29-31 and lines 36-39). Therefore, the teachings of Brebner and Cheng can be properly combined, as it would have been obvious to do so to provide users with an easier way to identify which updates are available for their systems and to resolve the technical difficulties in obtaining and installing the correct updates, as disclosed by Cheng (see col.2 lines 18-21).

In response to applicant's arguments regarding claim 8 that "Cheng is relied upon to teach at least one service available to the remote device; however, Cheng explicitly teaches away from transmitting information regarding a client device to a remote location; as a result, the teachings of Brebner and Cheng cannot be properly combined" (see page 9, 4th paragraph), applicants should note that Cheng is relied upon to teach a service available to the remote device (i.e. client computer) because a "service" could simply be providing an update to the client computer, which Cheng clearly teaches (see col.3 lines 40-45). In addition, although Cheng does seek to provide a system to determine software updates without abridging the privacy of users by obtaining and storing system profile information, Cheng also acknowledges that such system configuration information is necessary for determining which updates are applicable to a user's computer system and to ensure that the correct updates are being installed (see col.2 lines 29-31 and lines 36-39). Therefore, the teachings of Brebner and Cheng can be properly combined, as it would have been obvious to do so to provide users with an easier way to identify which updates are available for their systems and to resolve the technical difficulties in obtaining and installing the correct updates, as disclosed by Cheng (see col.2 lines 18-21).

In response to applicants' argument regarding claims 18 and 26 that "Cheng is silent regarding the consideration of hardware in determining the compatibility of update" and that "Cheng explicitly teaches away from transmitting information regarding a client device to a remote location" (see page 10 1st, 2nd, and 4th paragraphs) applicants should note that Cheng was not relied upon for consideration of hardware resources. Instead, Brebner was cited to teach the analysis of hardware resources, which is clearly disclosed by Brebner (see [0029]). Applicants should also note, as discussed above, applicants where Cheng teaches storing an update database that contains information for identifying in the client computers the software products stored thereon and information for determining for such products, which have software updates available; users of the client computers connect to the service provider computer and obtain a current version of portions of the database (see Abstract and col.3 lines 10-12 and lines 29-32). So, indications of the installed software products on the client computer are being received. In addition, although Cheng does seek to provide a system to determine software updates without abridging the privacy of users by obtaining and storing system profile information, Cheng also acknowledges that such system configuration information is necessary for determining which updates are applicable to a user's computer system and to ensure that the correct updates are being installed (see col.2 lines 29-31 and lines 36-39). Therefore, the teachings of Brebner and Cheng can be properly combined, as it would have been obvious to do so to provide users with an easier way to identify which updates are available for their systems and to resolve the technical difficulties in obtaining and installing the correct updates, as disclosed by Cheng (see col.2 lines 18-21).